There is one observation which I would like to make as to the sentence in respect of the 1st appellant. The 1st appellant is a limited company. The sentence of imprisonment in default of the payment of fine is clearly wrong. I therefore allowed the appeal and quashed the conviction, set aside the sentence and ordered the fines paid to be refunded.

Appeal allowed.

Solicitors: *Sault, Keith Sellar & Co.*

JAGJIT SINGH v. REGINA

[A. Cr. J. (Chua J.) July 2, 1962]

[Singapore — Magistrate's Appeal No. 78 of 1962]

Criminal Law and Procedure — Autrefois acquit plea — Previous acquittal on similar charge — Whether plea maintainable.

Road Traffic Ordinance (Cap. 227), s.13 — Motor Vehicles (3rd Party Risks and Compensation) Ordinance, 1960, s.3.

The appellant was charged before a magistrate with an offence under section 13(1) of the Road Traffic Ordinance of driving a motor-cycle without a driving licence. The appellant held a driving licence but it was not a licence which entitled him to drive a motor-cycle — a Class II Vehicle. The licence was in respect of Class III Vehicles (motor-cars) and Class IV Vehicles (heavy motor-cars).

At the trial before the magistrate the appellant pleaded *autrefois acquit* on the ground that in June 1955, i.e. some six years earlier he had been charged with a similar offence to wit, driving a motor-cycle without a driving licence when he held the same driving licence and at that trial in 1955 he was found not guilty and acquitted. The magistrate overruled the plea of *autrefois acquit*. On appeal,

Held: the plea of *autrefois acquit* was rightly rejected. The right to plead *autrefois acquit* depends on the principle that a man shall not be put twice in jeopardy for the same offence. It was clear on the evidence in this case that the present offence of riding a motor-cycle without a driving licence was not the same offence with which the appellant was charged in 1955; it was a distinct and separate offence.

Case referred to:—

(1) *Rex* v. *Barron* 10 Cr. App. R. 81 at p. 87.

MAGISTRATE'S APPEAL.

K. K. Bezboruah for the appellant.

Sachi Saurajen (Deputy Public Prosecutor) for the respondent.

Chua J.: The appellant was charged before the Magistrate with an offence under section 13(1) of the Road Traffic Ordinance of driving a motor-cycle without a driving licence and with an offence under section 3(2) of the Motor Vehicles (Third-party Risks & Compensation) Ordinance, 1960, of using the motor-cycle whilst not covered by third-party insurance.

The facts are shortly these. At about 1.30 p.m. on the 27th August, 1961, Lance Corporal 1370 of the Mobile Squad stopped the appellant who was on motor-cycle SAB. 5311 for a spot check. The appellant produced his driving licence (Ex. D3) but it was not a licence which entitled him to drive a motor-cycle — a Class II vehicle. The licence was in respect of Class III vehicles (motor-cars) and Class IV vehicles (heavy motor-cars). Lance Corporal 1370 explained to the appellant the offence that he had committed and took down all the particulars and made a report and the appellant was subsequently charged with these two offences.

At the trial before the Magistrate the appellant pleaded *autrefois acquit*, but his plea was overruled. The appellant was found guilty of the two charges and was fined $25 on the first charge and $300 on the second charge. He was also disqualified from holding or obtaining a Class II driving licence for a period of 12 months.

He has appealed to this Court and his main ground of appeal is that the Magistrate was wrong in rejecting the plea of *autrefois acquit*.

The plea was made on these facts. On the 22nd June, 1955, in Summons Case No. 6691 of 1955, the appellant was charged before a Magistrate with two offences: (1) driving a motor-cycle without a driving licence and (2) driving the motor-cycle whilst not covered by third-party insurance. The facts in that case were shortly as follows. On the 27th February, 1955, at 12.10 a.m., P.C. 3018 was on rounds at Bukit Timah Road on a motor-cycle. He saw a motor-cycle J. 6132 moving ahead of him in the same direction without a red tail light. He stopped the motor-cycle. The appellant was the rider. He checked the driving licence produced by the appellant and found that it was endorsed for Class III and Class IV vehicles only and not for motor-cycles. The driving licence produced by the appellant to P.C. 3018 was the same driving licence which was produced to Lance Corporal 1370 in the present case, i.e. Ex. D3. The appellant was found not guilty of driving a motor-cycle without a driving licence but was found guilty of driving without third-party insurance on his plea of guilty.

Mr. Bezboruah for the appellant contends that in the circumstances of this case the appellant can plead *autrefois acquit* to the present charge of driving a motor-cycle without a licence. I have carefully considered the arguments that were put forward by Mr. Bezboruah and the cases that were cited to me and I am of the opinion that the plea of *autrefois acquit* was rightly rejected.

The principle upon which a plea of *autrefois acquit* should be dealt with was stated by Lord Reading in the case of *Rex* v. *Barron* (1), where he said:

> " The principle on which this plea depends has often been stated. It is this, that the law does not permit a man to be twice in peril of being convicted of the same offence (4 Hawkins P.C. 311; B. II c. 35). If, therefore, he has been acquitted, i.e., found to be not guilty of the offence, by a Court competent to try him, such acquittal is a bar to a second indictment for the same offence. This rule applies not only to the offence actually charged in the first indictment, but to any offence of which he could have been properly convicted on the trial of the first indictment. Thus, an acquittal on a charge of murder is a bar to a subsequent indictment for manslaughter, as the jury could have convicted of manslaughter."

The principle is also stated in *Archbold's* Criminal Pleading, Evidence & Practice, 34th ed., p. 147 in these words:

"The principle on which the right to plead *autrefois acquit* depends is that a man may not be put twice in jeopardy for the same offence. See 2 Hawk. c. 35. And it does not rest on any doctrine of estoppel."

The only cases in which a previous acquittal can effectually be pleaded in bar to a subsequent indictment are:—

(i) where the acquittal was for the exact offence charged in the subsequent indictment; or

(ii) where the subsequent indictment is based on the same acts or omissions in respect of which the previous acquittal was made and some statute directs that the prisoner shall not be tried or punished twice in respect of the same acts or omissions."

It is clear in this case that the present offence of riding a motor-cycle without a driving licence is not the same offence with which the appellant was charged in 1955, it is a distinct and separate offence. For these reasons the contention as to the plea of *autrefois acquit* fails.

At the trial the record card kept by the police relating to the appellant was produced by the clerk in charge of the Licensing Records. On this record card were endorsed that the appellant held a driving licence for Class III and Class IV vehicles. There is no endorsement regarding Class II vehicles. This record card, however, bears endorsement from 1947 only. According to the clerk, there are no records from 1942 to 1945 and when questioned by the Court he said that "what I say is based on all available records."

The appellant in his defence said that he first obtained a driving licence in 1937 and it was endorsed for "motor-cars and lorries". In 1945 he took a test for motor-cycle and he passed that test and his licence was endorsed "and motor-cycles". In 1947 he lost the licence and he was issued with Ex. D3, a duplicate licence. In cross-examination the appellant admitted that when he received the duplicate licence he knew that he was licensed to drive Class III and Class IV vehicles only and that there was no endorsement to show that he was permitted to drive a motor-cycle.

Mr. Bezboruah submits that if the plea of *autrefois acquit* is not available then in the circumstances of this case the Magistrate should have taken into consideration that in 1955 the appellant was charged with the offence of riding a motor-cycle without a driving licence and was acquitted and he should have acquitted the appellant in this case. I am unable to agree with this submission. The Magistrate in the 1955 case did not give any reason for acquitting the appellant and it is a matter of speculation as to why he was acquitted.

It is further submitted by learned counsel that, as the record card relating to the appellant from 1937 to 1947 was not produced, the Magistrate should have accepted the evidence of the appellant that he had passed the test for motor-cycles and that an endorsement to that effect was endorsed on his original licence and that the Magistrate should have held that the defence had raised a reasonable doubt as to the truth of the prosecution case.

The Magistrate in his grounds of decision said:

"After careful deliberation the Court was of the view that the defence had failed to create any reasonable doubt as to the truth of the prosecution story and that it had also failed to create any reasonable doubt as to the guilt of the accused. Accordingly the Court found the accused guilty and convicted him."

The Magistrate appears to me to have rightly dealt with the case. The evidence for the prosecution seems to me to be very strong and it does not appear to me that the Magistrate ought to have had a reasonable doubt. In my view the Magistrate's decision was not against the weight of evidence.

Although the appellant had also appealed against sentence on the ground that it is excessive, his counsel, however, did not address the Court on it. I cannot say that the sentence is too severe.

For these reasons the appeal is dismissed.

Appeal dismissed.

LAI YONG KOON v. PUBLIC PROSECUTOR

[A. Cr. J. (Ismail Khan J.) July 2, 1962]

[Seremban — Criminal Appeal No. 17 of 1961]

Gaming — Chee Fah — Appellant found with slips of paper with Chinese characters — Description of expert that they were records of Chee Fah lottery — Whether evidence of modus operandi necessary — Expert to give reasons for holding that certain exhibits were Chee Fah Stakes — Common Gaming Houses Ordinance, 1953, s.4(1)(c).

The appellant was charged under section 4(1)(c) of the Common Gaming Houses Ordinance and convicted and sentenced to pay a fine of $250. On appeal it was contended that (1) no evidence was adduced as to the *modus operandi* of the lottery, and (2) the expert evidence was only a bare expression of opinion not supported by any reasons.

Held: (1) as Chee Fah is a character lottery, on the authority of *Choo See Kean & Ors.* v. *Public Prosecutor* (1) no evidence of *modus operandi* by an expert is necessary;

(2) the fact that the expert is not obliged to give any evidence as to the *modus operandi* of the lottery does not relieve him of the necessity of giving detailed evidence of his reasons for holding that certain exhibits were Chee Fah stakes.

Cases referred to:—

(1) *Choo See Kean & Ors.* v. *Public Prosecutor* [1959] M.L.J. 213.

(2) *Sim Ah Song & Anor.* v. *R.* [1951] M.L.J. 150.

CRIMINAL APPEAL.

Khoo Eng Chin for the appellant.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the respondent.